



CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
DIVISION OF LEGAL AFFAIRS
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Legal Guide DC-4

CHECKLIST FOR IDENTITY THEFT VICTIMS WHO ARE CONTACTED BY A DEBT COLLECTOR

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When you have confirmed that you are a victim of identity theft, immediately ...

- ✓ File a police report with the local law enforcement agency having jurisdiction over your address. The agency *must* take a police report and provide you a copy of it.¹ You may have to pay for copies.
- ✓ Obtain copies of your credit reports from each of the three major credit reporting agencies.
 - ▶ Check each credit report for accounts that you have not applied for or opened.
 - ▶ Legal Guide P-3 explains what else to look for in your credit reports and how to order them (see additional resources, below).
- ✓ Send a letter to each lender, creditor, financial institution and utility where the thief has opened an account in your name.
 - ▶ Explain that you are a victim of identity theft.
 - ▶ Include a copy of the police report.
 - ▶ Request a copy of all application forms and application information containing the thief's name, address, and other identifying information pertaining to the thief's application. In some cases, you may be able to obtain records of transactions or charges incurred by the thief.²
 - ▶ Send each letter by certified mail, return receipt requested, and keep a copy of each letter and enclosures.
 - ▶ You will be required to provide identifying information.
 - ▶ In many cases, you must be provided free copies of the requested information within 10 business days after your request has been received.³

- ✓ Provide the law enforcement agency that is investigating your identity theft case a copy of any application forms, application information, etc. that you receive.
- ✓ Provide a copy of the police report to each of the three major credit reporting agencies.
 - ▶ Once you have submitted copies of valid police reports, you can instruct the credit reporting agencies to block reporting of information that you allege appears in your credit reports as a result of identity theft.⁴ You also can add victim statements and security alerts to your credit reports.⁵ Legal Guide P-3 explains these options (see additional resources, below).

If you are contacted by a debt collector ...

- ✓ Tell the debt collector that you are the victim of identity theft, did not incur the debt, and are not responsible for it.
- ✓ Immediately send the debt collector a follow-up letter explaining that you are the victim of identity theft, did not incur the debt, and are not responsible for it.
 - ▶ If the debt collector is not the original creditor,⁶ send this letter no later than 30 days after you receive the debt collector's first written demand for payment. State that you dispute the validity of the debt. Your statement of dispute will trigger the collector's obligation to obtain at least minimal verification of the debt from the original creditor.⁷
 - ▶ Include a copy of your police report.
 - ▶ Include a copy of any application forms, application information, etc. that you have

- ▶ received from the creditor whose debt the collector is attempting to collect.
- ▶ State that the letter serves as notice to the collector under Civil Code section 1798.93(c)(5) that a situation of identity theft exists (see explanation in endnote 8, page 3).⁸
- ▶ Send the letter by certified mail, return receipt requested, and keep a copy of the letter and enclosures. Do not send the debt collector original documents.

✓ If the debt collector continues collection efforts:

- ▶ Send the debt collector a letter that specifies the times and places where the collector may, and may not, contact you. (In an extreme case, you can instruct the collector to stop communicating with you altogether. Weigh the pros and cons of taking this step after reading Legal Guides DC-1 and DC-2 (see additional references, below).)
- ▶ If necessary, register a complaint with the Federal Trade Commission.

✓ If the debt collector is not the original creditor,⁹ send the original creditor a letter explaining that you are the victim of identity theft, did not incur the debt, and are not responsible for it.

- ▶ Ask the original creditor to tell the debt collector that you are not responsible for the debt, and that it should stop its attempts to collect the debt from you.
- ▶ Include a copy of your police report. If necessary, include copies of any application forms, application information, etc. that you have received from the creditor.
- ▶ Send the letter to the creditor at the address it has specified for this purpose.¹⁰ Send the letter by certified mail, return receipt requested, and keep a copy of the letter and enclosures. Do not send original documents.

Consult additional references ...

Legal Guide DC-1 "What to do if You Receive a Demand for Payment from a Creditor or a Debt Collection Agency"

Legal Guide DC-2 "Summary of the Fair Debt Collection Practices Statutes"

Legal Guide DC-3 "Debt Collector's Wrongful Conduct: Some Tort Remedies for Debtors"

Legal Guide P-3 "Credit Identity Theft: Tips to Avoid and Resolve Problems"

These Legal Guides are available through the Department of Consumer Affairs' Web site, www.dca.ca.gov, or by mail at P.O. Box 989004, Sacramento, CA 95798-0004.

Federal Trade Commission, "Facts for Consumers – Fair Debt Collection" available at www.ftc.gov.

Other things to think about ...

Since the victim of identity theft did not incur the debt caused by the thief, the victim ordinarily will have a complete defense to the debt collector's demand for payment of the debt. The victim ordinarily should not pay any debt which results from the theft.

As a practical matter, if you convince the debt collector that the debt is not yours, the collector probably will stop collection efforts. If the collector knows that you dispute the debt, it may also incur important legal obligations. For example, if the collector has previously informed a credit reporting agency that the debt was in default, the collector must now inform the credit reporting agency that the debt is disputed.¹¹

The debt collector may ask you to provide personal identification information to establish that the debt is not yours. For example, the debt collector may request your Social Security number, driver's license number and addresses for the last several years. Disclosing personal information results in a loss of privacy, which you must balance against your interest in convincing the debt collector that you did not incur the debt. You should keep the originals of any documents that you provide to the debt collector.

If the debt collector persists or is abusive, you may need to consult an attorney. You *should* consult an attorney *immediately* if you are served in a lawsuit based on debts incurred by the thief.

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

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ENDNOTES

1. Penal Code section 530.6(a).
2. Civil Code section 1748.95, Financial Code sections 4002, 22470, Penal Code section 530.8.
3. Civil Code section 1748.95, Financial Code sections 4002, 22470.
4. Civil Code section 1785.16(k).
5. Civil Code section 1785.11.1 (security alerts) (effective July 1, 2002).
6. The original creditor is the party who extended credit to the debtor – in this case, the identity thief. Original creditors sometimes attempt to collect debts on their own behalf. In other cases, an original creditor will assign or sell the debt to a debt collector, who then attempts to collect it from the person whom the original creditor says incurred it.
7. 15 USC sections 1692g(a),(b).
8. Civil Code section 1798.93(c)(5). This notice allows a victim to demand damages and attorneys fees in an action against a claimant, such as a debt collector, who purports to have a claim for money (or an interest in property) in connection with a transaction procured by identity theft. If the claimant has already filed an action against the victim, the victim can file a cross-complaint against the claimant. The victim must prove that he or she is the victim of identity theft as to the particular claim. If the victim proves this, the court can award the victim a broad range of relief as appropriate to the case, including a declaration, injunction, dismissal of the claimant's claim, damages, and costs and attorneys fees. (Civil Code sections 1798.92 – 1798.97, Statutes 2001,

chapter 354 (AB 655 (Wright))). See these sections for important details.)

In order to recover damages or attorneys fees, the victim must have sent the claimant, at least 30 days before the victim files his or her action, a written notice explaining that the victim is a victim of identity theft. This notice should include a copy of the victim's police report or DMV investigative report. If the victim files a cross complaint, this notice can be part of the cross complaint. (Civil Code section 1798.93(c)(5).) The court may award the victim a substantial civil penalty against the claimant in limited circumstances. (Civil Code section 1798.93(c)(6).)

9. See explanation in endnote 6.
10. If the original creditor has reported the debt to a credit reporting agency, your letter will trigger one or both of the following obligations under the federal Fair Credit Reporting Act.
 - (a) A creditor who has provided information to a credit reporting agency regarding its transactions and experiences with consumers is called a "furnisher" of information. If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of information that the furnisher has provided to a credit reporting agency, the furnisher must include a notice that the information is disputed if it provides the information to a credit reporting agency. (15 United States Code section 1681s-2(a)(3).)
 - (b) A furnisher is prohibited from providing information to a credit reporting agency on a specific transaction if the furnisher knows, or should know, that the information is incomplete or inaccurate. (Civil Code section 1785.25(a).) If the furnisher determines that reported information is incomplete or inaccurate, it must promptly notify the credit reporting agency of its determination, and must provide the agency corrections to make the information complete and accurate. Thereafter, the furnisher cannot provide the credit reporting agency any of the information that remains incomplete or inaccurate. (15 United States Code section 1681s-2(a)(2).)
11. 15 USC section 1692e(8). See 15 USC sections 1682s-2(a)(2),(3).